

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. R2-2003-0047

WASTE DISCHARGE REQUIREMENTS FOR:

COYOTE CREEK BUSINESS PARK, A CALIFORNIA LIMITED PARTNERSHIP,
SILVER CREEK VALLEY PLACE COMMERCIAL DEVELOPMENT PROJECT, SAN JOSE,
SANTA CLARA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. Coyote Creek Business Park (hereinafter Discharger) proposes to construct a commercial development on a 10.48-acre site in the City of San Jose (hereinafter Project)(APN Numbers 678-07-029, 678-07-030, and 678-07-031). The Project will be implemented in two phases. The goal of Phase I of the Project is to provide infrastructure to support commercial development of the site. Phase II of the Project will include the construction of commercial structures. Phase I includes construction of the following infrastructure elements:
 - a. A T-bridge will be constructed from the Project site to the south side of the existing span carrying Silver Creek Valley Road across Coyote Creek. Below the bridge abutment for the new T-bridge, rock rip rap will be installed on the left bank of Coyote Creek from the top of the bank to just above the ordinary high water mark (OHW) (about elevation 187.8 feet National Geodetic Vertical Datum (NGVD)).
 - b. A new 24-inch diameter stormwater outfall will be constructed on the bank of Coyote Creek in an area of existing quarter ton rip rap, under the Silver Creek Valley Road bridge.
2. The Project will result in the direct placement of approximately 255 cubic yards of rip rap along a 72-foot long reach of the west bank of Coyote Creek. Approximately 0.06 acres of Project impacts will result from the placement of rip rap underneath the proposed bridge structure. An additional 0.04 acres of impact is the result of activities associated with the placement of the proposed stormdrain outfall.
3. **Mitigation Plan:** To mitigate for its permanent fill of 0.10 acres of riparian habitat within waters of the State, the Discharger will create 0.30 acres of riparian habitat on the Project Site, as proposed in its *Silver Creek Valley Road Bridge, Mitigation and Monitoring Plan* (hereinafter Mitigation Plan), dated October 12, 1999, and prepared by H.T. Harvey & Associates, and the Mitigation Plan's associated documents, including the *Silver Creek Valley Place Habitat Restoration / Mitigation Plans*, dated March 28, 2003, and prepared by H.T. Harvey & Associates. The Mitigation Plan is acceptable to the

Board, with the required submittals and revisions listed in the Provisions. The proposed mitigation consists of planting approximately 67 native trees and native shrubs on the west bank of Coyote Creek to provide high quality native riparian habitat immediately adjacent to the existing riparian corridor.

4. **Post-construction stormwater management:** To provide stormwater quality treatment for runoff from the new access road, the Discharger has selected a continuous deflective separation unit to treat runoff before it is discharged to Coyote Creek via the new outfall. This unit shall be operated with oil and grease sequestering sorbents in its separation chamber.
5. On April 25, 2002, the Discharger submitted an initial application for Waste Discharge Requirements for the Project. That application was subsequently completed by additional submittals.
6. The Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to Section 13263 of the California Water Code (CWC). The Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from this Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes over the life of the Project and its construction.
7. The Board, on June 21, 1995, adopted, in accordance with Section 13244 et. seq. of the CWC, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 California Code of Regulations (CCR) §3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters. This Order is in compliance with the Basin Plan.
8. The Project is located on the west bank of Coyote Creek. The Basin Plan defines the existing and potential beneficial uses of Coyote Creek as: cold freshwater habitat, fish migration, preservation of rare and endangered species, contact and non-contact water recreation, fish spawning, warm freshwater habitat, and wildlife habitat. Additionally, waters on the Project site provide habitat for a federally listed population of threatened Central California Coast Steelhead.
9. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The policy further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts

should mitigation for lost wetlands be considered.

10. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." Section 13142.5 of the CWC requires that the "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas."
11. This Order applies to the temporary and permanent fill and indirect impacts to waters of the State associated with the Project, which is comprised of the components listed in Finding 1. Construction of the Project will result in the permanent placement of fill in and/or disturbance of 0.10 acres of jurisdictional waters. The permanent impact of this fill on waters was identified as a less-than-significant impact with mitigation in the CEQA documents certified for the Project.
12. Discharges of stormwater associated with construction activity will occur. The CEQA documents certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements. This includes complying with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter General Permit).
13. Discharges of storm water associated with the post-construction operation and maintenance of the Project will occur following its completion. The CEQA documents certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of NPDES permit requirements. This includes complying with the requirements placed on the Project under NPDES Permit CAS0299718 (Board Order No. 01-024), the NPDES Municipal Storm Water Permit that covers the City of San Jose. The Discharger has submitted a written statement that construction of Phase II of the Project will be consistent with the requirements of NPDES Permit CAS0299718, Provision C.3, the permit provision addressing new and redevelopment projects. Construction of Phase II shall include the construction of post-construction stormwater treatment measures, such as vegetated swales or detention basins, that meet the numeric sizing criteria for stormwater Best Management Practices in Subsection d. of Provision C.3.

14. Because of the Project's proximity to sensitive resources, including special status species habitat, and potential to discharge materials that could significantly impact those resources, this Order requires the Discharger to submit a Storm Water Pollution Prevention Plan or Plans (SWPPPs) for the Project, prepared pursuant to the provisions of the General Construction Permit, at least 60 days prior to the beginning of construction for the Project.
15. Discharges of ground water or other non-storm water during construction may be required. This Order considers such discharges covered by the General Permit, contingent on submittal of an acceptable discharge plan at least 30 days prior to such a discharge.
16. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) for such projects. The Board finds, after review of the Project's environmental documents, that all environmental impacts have been identified and, with compliance with the conditions of this Order, will be mitigated to a level of insignificance. The Project site is located in the Edenvale Redevelopment Area of San Jose. A master Environmental Impact Report (EIR) was prepared for the Edenvale Redevelopment Project. The City of San Jose, City Council approved the *Final Environmental Impact Report for the Edenvale Redevelopment Project* on June 20, 2000. A Notice of Determination for the EIR for the Edenvale Redevelopment Area was filed on June 27, 2001. An *Initial Study and Application for Environmental Clearance, Silver Creek Valley Place* (July 2001), was prepared for the development at the Project site. An addendum to the EIR was approved by the City Council on September 5, 2001.
17. The Board has notified the U.S. Army Corps of Engineers (Corps), City of San Jose, U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), and other interested agencies and persons of its intent to prescribe WDRs for this discharge.
18. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.
19. This Project file is maintained at the Board under File No. 2188.07 and Site No. 02-43-C0391.

IT IS HEREBY ORDERED that the Discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under CWC Sections 13263 and 13267:

A. Discharge Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in CWC §13050(m).
5. The discharge of decant water from active dredging or fill sites and dredged material stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
6. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
7. The discharge of materials other than storm water, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.
8. The discharge of drilling muds to waters of the State, or where such muds could be discharged to waters of the State, is prohibited.

B. Provisions

1. The Discharger shall comply with all Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Discharger shall submit copies of all necessary approvals and/or permits for the Project and mitigation projects from applicable government agencies, including, but not limited to, CDFG, USFWS, City of San Jose, Corps, and the Santa Clara Valley Water District (SCVWD), for each Project component as applicable to that component, prior to

the start of construction on that component.

Project Implementation Deadlines

3. No construction shall commence on any Project component until all required documents, reports, plans, and studies required in the Provisions associated with that component have been submitted to and found acceptable by the Executive Officer. For example, mass grading for the Project may begin, within the timelines of the related Provisions, when the SWPPP, and other documents required in the Provisions have been accepted by the Executive Officer. In all cases where the Discharger is required to make a submittal acceptable to the Executive Officer, the Executive Officer may determine that construction may begin sooner than the specified number of days for the submittal prior to the beginning of construction.
 - a. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a Plan that includes all appropriate Mitigation Plan implementation details that are not presently included in the Mitigation Plan. This includes planting plans and details such as designs and construction drawings for in-stream structures, irrigation plans, and all other information, as appropriate. Upon the Executive Officer's determination that the Plan is acceptable, the Executive Officer may determine that construction may begin sooner than 60 days following submittal of the acceptable Plan.

A Plan for the following mitigation component may be submitted later than 60 days prior to the beginning of construction, but must be submitted within twelve months of the date of Board approval of this Order: the *Final Silver Creek Valley Road Bridge Mitigation and Monitoring Plan*.
4. As-built plans for the mitigation site shall be prepared as per the Mitigation Plan, and submitted to the Board within 12 weeks of the completion of mitigation site construction.
5. Annual monitoring reports shall be submitted to the Board by December 31 of each monitoring year, as per the Mitigation Plan, until the sites have met their performance standards and final success criteria.
6. Not later than 60 days prior to the beginning of construction of any project component, the Discharger shall submit, acceptable to the Executive Officer, a SWPPP to address the Project's expected construction stage impacts.
7. Any changes to the final mitigation plans referenced in the Provisions must be approved in writing by the Executive Officer.

Notice of Mitigation Completion

8. When the Discharger has determined that the mitigation area has achieved the performance standards and final success criteria specified in the Mitigation Plan, it shall

submit a notice of mitigation completion (notice), acceptable to the Executive Officer. The notice shall include a status report on the implementation of the Mitigation Plan. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of annual mitigation monitoring reports is no longer required.

Other Provisions

9. All reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California.
10. The Discharger shall adhere to the conditions of the Section 1603 Lake and Streambed Alteration Agreement (R3-1355-99), issued by CDFG, and to the conditions of the encroachment permit issued by the SCVWD.
11. The Project shall be implemented in accordance with the Plan for the Improvement of Silver Creek Valley Road & Silver Creek Valley Place (Nolte Engineering, PW Proj. # 3-10584) for construction of the rip rap bank protection at the T-bridge (Sheet 3 of 33, dated 8/27/02, Sheet 5 of 33, dated 8/29/02, Sheet 7 of 33, dated 9/04/02, and Sheet 9 of 33, dated 8/03/02), construction of cellular paver and grass emergency access routes (Sheet 3 of 33, dated 8/27/02, and Sheet 7 of 33, dated 9/04/02), the overland release swale (Sheet 3 of 33, dated 8/27/02, and Sheet 6 of 33, dated 9/03/02), and the storm drain outfall (Sheet 7 of 33, dated 9/04/02, Sheet 11 of 33, dated 9/04/02, and Sheet 12 of 33, dated 9/05/02); any changes in the design of these features must be submitted to the Executive Officer for review and approval prior to construction.
12. No equipment shall be operated in areas of flowing or standing water; no fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to Coyote Creek may occur; and construction materials and heavy equipment must be stored outside of the ordinary high water mark.
13. The Discharger has selected a 2 cubic foot per second capacity, continuous deflective separation unit to treat stormwater runoff from the new access road. This unit shall be operated with oil and grease sequestering sorbents in its separation chamber and shall be operated as specified in the operation and maintenance manual provided by CDS Technologies, the manufacturer of the selected separation unit.
14. Mitigation plantings shall be installed, maintained and monitored as specified in the Mitigation Plan. Propagules for initial container plants, replants, and acorns are to be sourced in the Coyote Watershed. Mitigation plantings shall be monitored and maintained for a minimum of five years. All plantings shall have a minimum survival of 80% at the end of five years and shall attain 70% cover after three years and 75% cover after five years. If the survival and/or cover requirement goals are not attained, the Discharger is responsible for replacement planting, additional watering, weeding, invasive species eradication, or any other practice to achieve the survival and coverage requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after replacement planting. Modifications to the survival

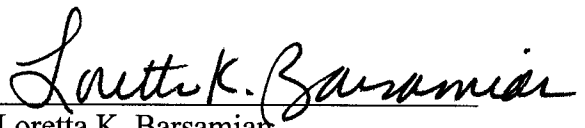
and/or cover requirement goals or to the list of approved plants in Section 4.5 of the Mitigation Plan shall be submitted to the Executive Officer before such modifications are implemented at the Project site.

15. The Discharger shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this Project. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC §13267(b), a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.
16. Should discharges of otherwise uncontaminated ground water contaminated with suspended sediment or other non-storm water that has accumulated in utility trenches or other portions of the Project be required, where such discharges are not otherwise covered by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the Discharger's submittal of a discharge/treatment plan, acceptable to the Executive Officer, at least 30 days prior to such a discharge.
17. The Discharger shall notify the Board in writing at least 30 days prior to actual start dates for each Project component (i.e., prior to the start of grading or other construction activity for any Project component, including the mitigation components).
18. The Discharger shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with its application for waste discharge requirements.
19. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
20. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
21. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
22. In accordance with CWC §13260, the Discharger shall file with the Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansions of development, or any change in drainage characteristics at the

Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled.

23. The Discharger shall maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
24. The Discharger shall permit the Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order.
25. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies; nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
26. The Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on May 21, 2003.


Loretta K. Barsamian
Executive Officer